



State of New Jersey

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
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BOB MARTIN
Commissioner

April 12, 2013

Mr. Willard Potter
DeMaximus Inc.
186 Center St. Suite 290
Clinton, NJ 08809

Re: Second Request for Additional Information for
River Mile 10.9 Removal Action of the Lower Passaic River
Waterfront Development Permit Equivalency Submission
DEP LUR 30232-05-0001.2/ 13000 Eq

Dear Mr. Potter:

The Office of Dredging and Sediment Technology (ODST) received the captioned Permit Equivalency Submission for the proposed Removal Action at R M 10.9 of the Lower Passaic River a prepared for the Cooperating Parties Group, Newark, on February 27, 2013. On March 21, 2013 the ODST issued a Request for additional Information letter.

On April 10, 2013, the Office of Dredging and Sediment Technology (ODST) received drawings entitled, "LOWER PASSAIC RIVER MILE 10.9 TIME CRITICAL REMOVAL ACTION" dated 9 April 2013. By separate e-mail, addressed to Mr. Anthony Cinque, ODST also received via e-mail a letter captioned "Response to April 4 Information Request Supplement to Waterfront Development Application".

Please be advised that this submission remains incomplete with respect to the Department's request for additional information letter of March 21, 2013. As you are aware, an approved Final Design Plan is the EPA and partner agency review document that establishes the basis and design of the removal action at R.M 10.9. During the pre-application conference held in February 2013 and via subsequent correspondence with the applicant, clear guidance was conveyed from ODST to the applicant stressing that the Permit Eq. submission should be submitted when Final Design document is approved. Unfortunately, the Final Design Plan materials are not complete at this time and thus no Final Design approval has been granted. Subsequently, the submission of this Permit Equivalency application in advance of the Approved Final Design Plan appears to be a factor in the incompleteness of this application.

In order for the review process to continue a complete response document and supporting plans must be provided fully addressing each of the applicable CZM Rules as well as FHA requirements items elucidated in the Department's letter of March 21, 2013 and reiterated in this letter.

Plan Specific Comments

Generally, the plan sheets submitted contain a number of omissions and errors, some of which are noted below:

1. There are 12 sheets, however the package contains two sheets numbered 8, and one is identified as "sheet 8 of 11" the other "sheet 8 of 12".
2. The legend is incomplete and thus the plans difficult to interpret. No descriptions or labels have been provided for the various colored line areas. Some areas contain labels such as Navigation Channel but lack arrows depicting the limits/boundaries of said areas.
3. The separation between the navigation channel and the limit of dredging area is unclear. At locations they appear to overlap. The Draft Final Design Plans do not agree or depict corresponding distances to the navigation channel.
4. Sheet 4 of 12 contains note No. 10 stating "the Removal area boundary shown is based on regulatory accepted limits of contaminated sediment and are not to be interpreted as the boundary of dredging". This remark must be clarified. Any Permit Eq. if one were issued, must reference plans depicting the full extent of regulated work which includes dredging. Accordingly, the removal area boundary and limits of dredging must be in agreement. Please remove the note or provide a complete written explanation.
5. The cross sections provided are not complete. Many more cross sections are depicted in the reduced scale plans of the Draft Final Design Document. This submission must be as or more complete than the Draft Final Design Document.
6. Sheet 4 of 12 contains note No. 18 stating: "The long term stability of uncapped areas abutting cap will not be impacted and will be monitored as part of the Cap Long Term Monitoring and Maintenance Plan. Said plan has not been provided and this item is the subject of the ongoing review of the Design Document. Plan notes should be limited to relevant factual information and therefore this note should be removed or modified.
7. Sheet 8 of 12 contains a label that it connects to Figure 5B, however no figure 5B was provided in the plan set. Please rectify.
8. There is no sheet depicting silt curtains, specifications thereof, or their manner of deployment. Please provide.

Coastal Zone Management Rules (NJAC 7:7E et. seq.)

Dredged Material Placement on Land (N.J.A.C 7:7E-7.12) & Acceptable Use Determination (AUD)

9. As previously stated by the Department the AUD process shall apply to the processing facility and shall require demonstration that the processing facility is able to accept and process this material in consideration of its contaminated character. It is acknowledged that stabilized RM 10.9 sediment is proposed to be disposed of at an out of state RCRA Subtitle C Landfill and not reused. The Department previously requested a letter of acceptance from the final facility accepting the dredged material. The applicant has provided a letter of acceptance from Clean Earth Dredging Technologies. Clean Earth is the processing facility and not the final acceptance site. Accordingly, please provide the document which was specifically requested.

Water Quality (N.J.A.C 7:7E-8.4)

10. By way of the previous request for additional information letter, ODSI indicated that the processing facility treating the RM 10.9 sediment must also address where RM 10.9 supernatant/wastewater will be sent for final treatment/disposal. Accordingly, the submission of a letter of acceptance from the source identified as

accepting the dewatered water/supernatant must be provided. No such letter has been provided. Therefore, this item remains deficient.

11. In order to comply with this Rule the applicant must demonstrate that all applicable water quality standards are met within the removal site and associated adjacent waters during the dredging and capping process and after the removal action is completed. Accordingly, the applicant must provide, at a minimum, a draft water quality management plan (WQMP) which substantively addresses and incorporates all comments conveyed by the Department during the review of the Draft Final Design Report. Upon review of said draft WQMP by the Department (and demonstrated compliance with all other outstanding CZM and FHA items) a determination will be made if a Permit Equivalency can be issued conditioned upon the acceptance of the WQMP in the Final Design Report.
12. The response letter states that the Flood Hazard Area Control Act rules are not applicable to the Rm 10.9 Removal Action. Typically, challenges to the basic applicability of particular regulations occur during the pre-application phase, well in advance of the application submission. The Department maintains that the Flood Hazard Area Control Act rules apply to the proposed activity and therefore compliance with these Rules is necessary.
13. Existing condition values of Manning's 'n' values have been reported to range from 0.025 to 0.032. Proposed condition values have been reported to range between 0.022 and 0.027. An application of Manning's equation reveals that the range in "n" values will alter the carrying capacity of the river during smaller storm events. This could lead to additional flooding, which is counter to the Flood Hazard Area Control Act rules. In addition, the April 10, 2013, resubmittal letter states that the "n" values will be made smoother in the proposed condition. This implies that the river would then have a greater capacity to convey water, which could lead to additional flooding, at least in smaller storm events. This is not permissible under the Flood Hazard Area Control Act rules. The Manning's n values must be further defined in the existing condition to determine if the range of "n" values in the river today exhibit as much variability as stated by the applicant. In addition, it is suggested recommended that the material to be placed in the river match the "n" values of the existing condition. This will avoid concerns over additional flooding along the river in the smaller storm events. Otherwise, more formal analyses will be required.


The submission of incomplete, piecemeal and fragmentary responses just days before the desired decision has not afforded the Department the ability to determine compliance with the State's Rules as provided by the ARAR's.

ODST understands the time-sensitive nature of this project and is keenly aware of the applicant's desire to receive authorizations quickly. However, where there is an expectation of an expeditious review a robust and complete application is particularly critical. It is also noted that the proposed removal project is a highly contaminated site in a dynamic estuarine environment located in waters of the State of New Jersey. Accordingly, such review merits careful evaluation.

Please submit the materials requested above along with five complete copies of a revised statement of compliance or complete response to deficiency document. This submission must contain dated, signed, sealed full size plans drawn to scale incorporating all of the noted corrections, details and information. All materials submitted must be in agreement with the Draft or Final Design Document and must contain the same level of detail and accuracy as the Design Document. Electronic submissions of the materials are also requested.

All future correspondence regarding this letter and the associated Permit Equivalency should be made directly to the Office of Dredging and Sediment Technology.

If you have any questions regarding this letter please contact me at (609) 292-9342

Sincerely,

David Q. Risilia
Supervising Environmental Specialist
Office of Dredging and Sediment Technology

C: NJDEP – Tom Cozzi
NJDEP – Anthony Cinque
NJDEP - Janine MacGregor,